
**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANDRE D. ABRON,

Plaintiff,

vs.

**SOO LINE RAILROAD COMPANY D/B/A
CANADIAN PACIFIC RAILROAD,**

Defendant.

No:

Jury Demand

FILED: APRIL 4 , 2008

08CV1955 TC

JUDGE GETTLEMAN

MAGISTRATE JUDGE SCHENKIER

**COMPLAINT
AS AND FOR A FIRST CAUSE OF ACTION
(Discrimination based on Disabilities)**

NATURE OF ACTION

This is an action under Title I of the Americans with Disabilities Act of 1990 and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of disability and to make whole ANDRE D. ABRON ("ABRON"). Defendant, SOO LINE RAILROAD COMPANY D/B/A CANADIAN PACIFIC RAILROAD ("CANADIAN") discriminated against ABRON, a qualified individual with a disability, because of his disability.

JURISDICTION AND VENUE

Jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. & & 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C.A. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C.A. § § 2000e-5 (f)(1) and (3), and pursuant to Section 102

of the Civil Rights Act of 1991, 42 U.S.C.A. § 1981(A).

The employment practices hereafter alleged to be unlawful were and are now being committed in the Northern District of Illinois, Eastern Division.

PARTIES

1. Plaintiff, ANDRE D. ABRON, (hereinafter "ABRON") is an adult person and a resident of Cook County, State of Illinois.

2. ABRON was an employee of Defendant, SOO LINE RAILROAD D/B/A CANADIAN PACIFIC RAILROAD ("CANADIAN") February 8, 2007.

3. At all times relevant, CANADIAN, has been a foreign corporation doing business in Illinois.

4. CANADIAN is an employer within the meaning of the ADA and has been at all times material to the allegations herein.

5. Plaintiff, ABRON is "disabled" as defined by ADA 42 U.S.C.A. § 12102 (2), in that he has a record of or is regarded as having a drug use impairment that substantially limits one or more of his major life activities.

STATEMENT OF CLAIMS

6. Despite Defendant listing itself as an equal employment company and having a company policy against Discrimination to those legally disabled, Defendant intentionally discriminated against Plaintiff because of Plaintiff's disability by refusing to provide minimal accommodation required by him, and by Defendant's policy and practice of not accommodating, on many occasions, the physical needs of the Plaintiff.

7. In the alternative, the action of Defendant done pursuant to a policy or practice that has a discriminatory effect on Plaintiff as a disabled person with Plaintiff's type disability, in the following manner: that it is implied that unless an individual is 100%

"normal" physically, he has no right to any employment whatsoever.

8. Plaintiff is a "qualified individual with a disability" within the meaning of 42 U.S.C.A. § 12111(8) because he can, with reasonable accommodations, perform the essential functions of the job that he held in the employ of the Defendant.

9. The discriminatory action of Defendant as set forth above has caused Plaintiff to suffer losses of earnings, and as a further proximate result of Defendant's unlawful and intentional discriminatory actions against Plaintiff, as alleged above, Plaintiff has been harmed in that Plaintiff has suffered in his position, his work environment was impaired and his work performance had been impaired. As a further proximate result of Defendant's unlawful and intentional discriminatory actions against Plaintiff, as alleged above, Plaintiff has been harmed in that Plaintiff has suffered emotional pain, humiliation, mental anguish, loss of enjoyment of life, and emotional distress. As a result of such discrimination and consequent harm, Plaintiff has suffered such damages in an amount according to proof.

10. Plaintiff has no adequate remedy at law to secure relief. If this court does not enter an order for Defendant to reinstate and accommodate Plaintiff, Plaintiff will be irreparably injured.

11. Plaintiff filed a discrimination charge against Defendant with the Equal Employment Opportunity Commission (EEOC). That charge was timely filed, under the ADA, 42 U.S.C.A. § 12117(a), which incorporates the procedures set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. A. § 2000e-5(c).

12. On January 8, 2008, Plaintiff received notice from the EEOC of his right to bring this action (see Exhibit "A"), and Plaintiff timely filed this action.

**AS AND FOR A SECOND COUNT OF ACTION
(Title VII-RACE DISCRIMINATION)**

Nature of the Action

13. This is an action under Title VII of the Civil Rights Act of 1964 and as amended by inter alia, the Civil Rights Act of 1991, for the Defendant, CANADIAN having subjected Plaintiff, KELLY to racial discrimination by failure to treat him the same as other non-African-American Black employees despite KELLY'S repeated complaints about same.

14. Plaintiff repeats and realleges each and every allegation set forth above with the same force and effect as more fully set forth herein.

15. Defendant by its action or actions of its agents, caused and created a hostile work environment which unreasonably interfered with the terms and conditions of Plaintiffs employment and Plaintiff performance in his job and created a racially hostile and offensive and hostile work environment which included racial slurs. All in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000-e et seq; as amended by inter alia the Civil Rights Act of 1991.

16. By reason of the racial discrimination and allowing the hostile environment, by Defendant and its agents, Plaintiff has suffered a loss of earnings and benefits, in addition to suffering great pain, humiliation and mental anguish, all to her damage.

17. Further, said action on the part of the Defendant was done with malice and reckless disregard for Plaintiffs' protected rights.

**AS AND FOR A THIRD COUNT OF ACTION
(Title VII-RACE DISCRIMINATION)**

18. Plaintiff realleges each and every allegation set forth above with the same force

and effect as if more fully set forth herein.

19. Defendant has intentionally retaliated against Plaintiff, based upon filing complaint for Race Discrimination, Religious Discrimination, National Origin Discrimination, and Disparate Treatment because of a Disability and for Requests for Accommodations. Wherein Defendants agents created a hostile and offensive work environment, all in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000-e et seq., as amended by, inter alia the Civil Rights Act of 1991.

20. By reason of the retaliation of Defendant, Plaintiff has suffered a loss of earnings and benefits, in addition to suffering great pain, humiliation and mental anguish, all to her damage.

21. Further, said action on the part of the Defendant was done with malice and reckless disregard for Plaintiffs' protected rights.

**AS AND FOR A FOURTH CAUSE OF ACTION
(Title VII-RETALIATION)**

22. Plaintiff realleges each and every allegation set forth above with the same force and effect as if more fully set forth herein.

23. Defendant has intentionally retaliated against Plaintiff, based upon filing prior complaints for Discrimination with the EEOC, charge number 440-2006-04323. Wherein Defendants agents created a hostile, retaliatory and offensive work, hostile and retaliatory environment, all in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000-(e) et seq., as amended by, inter alia the Civil Rights Act of 1991.

24. By reason of the retaliation of Defendant, Plaintiff has suffered a loss of earnings and benefits, in addition to suffering great pain, humiliation and mental anguish, all to his damage.

25. Further, said action on the part of the Defendant was done with malice and reckless disregard for Plaintiffs' protected rights.

**AS AND FOR A FIFTH CAUSE OF ACTION
(Title VII-RETALIATION (CONTINUING VIOLATION))**

26. KELLY repeats and realleges each and every allegation set forth above with the same force and effect as more fully set forth herein.

27. That since filing his EEOC complaints there has been a continuing violation of retaliation and hostile by providing false, improper or incomplete information to potential employers for which Plaintiff had attempted or sought employment

28. KELLY's health has become impaired as a result of retaliation by the Defendant.

29. As a result of retaliation and discrimination against KELLY, he has lost tangible employment benefits..

30. Plaintiff has no adequate remedy at law to secure relief. If this court does not enter an order for Defendant to reinstate or bar Defendant from retaliation with potential employers, Plaintiff, Plaintiff will be irreparably injured.

31. Plaintiff filed a discrimination charge against Defendant with the Equal Employment Opportunity Commission (EEOC). That charge was timely filed, under the ADA, 42 U.S.C.A. § 12117(a), which incorporates the procedures set forth in Title VII of the Civil Rights Act of 1964, 42 U.S.C. A. § 2000e-5(e).

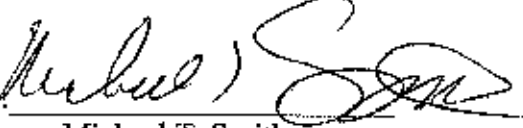
32. On February 14, 008, 2008, Plaintiff received notice from the EEOC of his right to bring this action (see Exhibit "B"), and Plaintiff timely filed this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. Declare the conduct engaged in by Defendant to be in violation of Plaintiff's rights;
2. For injunctive relief, including but not limited to relief required to make Plaintiff whole for the losses caused by the violations of Defendant;
3. For compensatory damages in an amount according to proof;
4. For costs of suit, including reasonable attorney's fees and expert fees, pursuant to 42 U.S.C.A. § 12117(a), which incorporates the remedies set forth in Title VII of the Civil Rights Act of 1964, Title 42 U.S.C.A. § 2000e-5(k); and
5. For such other and further relief as the court deems proper.

ANDRE D. ABRON

BY: 
Michael T. Smith
Trial Attorney

Michael T. Smith
440 W. Irving Park Road
Roselle, IL 60172
(847) 895-0626

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Andre D. Abron
753 Willow Road
Matteson, IL 60443

From: Chicago District Office
500 West Madison St
Suite 2800
Chicago, IL 60661

CERTIFIED MAIL 7099 3400 0014 4054 1702



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

440-2007-05344

Jose Romo,
Investigator

(312) 353-8175

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.



Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.



While reasonable efforts were made to locate you, we were not able to do so.



You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Enclosures(s)

John P. Rowe

John P. Rowe,
District Director

1-8-08

(Date Mailed)

cc:

CANADIAN PACIFIC RAILWAY

EXHIBIT "A"

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Andre D. Abron
753 Willow Road
Matteson, IL 60443

From: Chicago District Office
500 West Madison St
Suite 2800
Chicago, IL 60661

CERTIFIED MAIL 7099 3400 0018 8814 7238



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

440-2007-06301

Jose Romo,
Investigator

(312) 353-8175

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in a federal or state court **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)



More than 180 days have passed since the filing of this charge.



Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.



The EEOC is terminating its processing of this charge.



The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:



The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.



The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

John P. Rowe

John P. Rowe,
District Director

2-11-08

(Date Mailed)

Enclosures(s)

cc:

CANADIAN PACIFIC RAILWAY

EXHIBIT "B"

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA
☒ EEOC
440-2007-05344**Illinois Department Of Human Rights**

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Mr. Andre D. Abron

Home Phone (incl. Area Code)

(708) 720-6110

Date of Birth

09-13-1967

Street Address

City, State and ZIP Code

753 Willow Road, Matteson, IL 60443

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

CANADIAN PACIFIC RAILROAD

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(630) 860-4450

Street Address

City, State and ZIP Code

11306 Franklin Avenue, Franklin Park, IL 60106

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☒ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

07-29-2006**02-08-2007**☐

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)).

I began my employment with Respondent on November 29, 2004. My most recent position was Freight Conductor. On May 25, 2006 I filed EEOC Charge #440-2006-04323. Since filing, I have been subjected to harassment and racial slurs. On February 8, 2007 I was discharged.

I believe that I have been discriminated against because of my race, Black, and retaliated against for engaging in protected activity in violation of Title VII of the Civil Rights Act of 1964, as amended and in violation of Title I of the Americans With Disabilities Act of 1990.

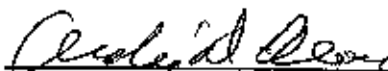
RECEIVED EEOC**MAY 25 2007****CHICAGO DISTRICT OFFICE**

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

May 25, 2007

Date



Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA☒ EEOC**440-2007-06301****Illinois Department Of Human Rights**

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Mr. Andre D. Abron

Home Phone (Incl. Area Code)

(708) 720-6110

Date of Birth

04-13-1967

Street Address

City, State and ZIP Code

753 Willow Road, Matteson, IL 60443

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

CANADIAN PACIFIC RAILWAY

No. Employees, Members

Unknown

Phone No. (Include Area Code)

(630) 860-4450

Street Address

City, State and ZIP Code

11306 Franklin Avenue, Bensenville, IL 60106

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

07-06-2007**07-06-2007**☐

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I filed a previous EEOC charge 440-2007-05344. On July 6, 2007, I applied for a position at a new potential employer. Respondent provided information to the potential employer. I was not selected for the position.

I believe I have been retaliated against for engaging in a protected activity, in violation of Title VII of the Civil Rights Act of 1964, as amended.

RECEIVED EEOC**JUL 11 2007****CHICAGO DISTRICT OFC**

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

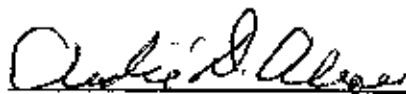
I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

Jul 11, 2007

Date



Charging Party Signature